

AGREEMENT FOR THE USE AND OCCUPANCY AND CARETAKER SERVICES
FOR THE WIDOW HARRIS HOUSE AND CURATOR SERVICES FOR THE
PUTTERHAM SCHOOL

This AGREEMENT FOR THE USE AND OCCUPANCY AND CARETAKER SERVICES FOR THE WIDOW HARRIS, 21 Newton Street, Brookline, Massachusetts, and Curator Services for the Putterham School, Larz Anderson Park, Brookline, Massachusetts ("Occupancy Agreement," or "Agreement"), is made this 12th day of August, 2014, by and between the Board of Selectmen of the Town of Brookline ("Town") with offices at 333 Washington Street, Brookline, Massachusetts, The Brookline Historical Society ("Society"), and Patrick Farmer and Meredith Ruhl (the "Curator/Caretaker") of 21 Newton Street, Brookline, Massachusetts.

WHEREAS, the Widow Harris House, a town-owned single-family wood frame dwelling containing six rooms (6)four (4) rooms, one bathroom, an attic and a basement, or 4 rooms on first floor and 2 rooms on 2nd with an attic located at 21 Newton Street, Brookline, Massachusetts (hereinafter referred to as "the Property") is listed in the National Register of Historic Places; and

WHEREAS, the Brookline Historical Society has acted as overseer of the Property; and

WHEREAS, the Society seeks a new caretaker for the Property and curator of the Putterham School ("School"); and

WHEREAS, the Selectmen seek to appoint a new caretaker/curator for the Property and School; and

WHEREAS, the Town of Brookline, through its Chief Procurement Officer, with the assistance of the Society, solicited quotes in accordance with M.G.L. c. 30B for the use and occupancy and provision of caretaker and curator services for the Property and the School; and

WHEREAS, the Town and the Society, in soliciting such proposals, desire to have the Property and School and their contents preserved as a historical museum for the benefit of Town residents; and

WHEREAS, quotes were received on May 13, 2014, and the proposal from the Curater/Caretaker was reviewed, a copy of which is attached hereto ("Proposal"); and

WHEREAS, on May 13, 2014, the Selectmen, after consultation with the Society, voted to allow the Property to be used and occupied by Curator/Caretaker for the period commencing August 15, 2014 through and including August 14, 2017, unless such period is earlier terminated or extended as herein provided; and

WHEREAS, the Curator/Caretaker agrees to use and occupy the Property in accordance with the terms and conditions set forth herein; and

WHEREAS, the Curator/Caretaker hereby accepts appointment as the curator/caretaker upon the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the Curator/Caretaker agrees to the following terms and conditions for the use and occupancy of the Property and for the provision of caretaker and curator services of the Property and the School:

1. The Property

The Town, in consideration of the covenants and agreements set forth herein, grants to the Curator/Caretaker the use and occupancy of the Property known as The Widow Harris House, a town-owned single-family wood frame dwelling containing four (4) rooms, one bathroom, and an attic and a basement that is located at 21 Newton Street, Brookline, Massachusetts.

2. Term

The term of this Occupancy Agreement shall be for three (3) years, commencing on August 15, 2014, through and including August 14, 2017, unless sooner terminated as herein provided. This Occupancy Agreement may be extended by agreement of the parties for an additional three-year period commencing on August 15, 2017, through and including August 14, 2020, subject to the terms and conditions of this Occupancy Agreement and to any other terms and conditions that are in addition to or different from the terms of this Occupancy Agreement as may be specified by the parties in writing (including, but not limited to, with respect to fees and responsibilities).

3. Curator's/Caretaker's Payments to Town

As proposed in the Curator's/Caretaker's bid, the Curator/Caretaker shall pay \$1,100.00 per month to the Town of Brookline for the use and occupancy of the Property ("Occupancy Payment"). Occupancy Payments shall be due on the first (1st) day of each month and shall be made by check payable to the Town of Brookline and delivered to the Town's Director of Public Buildings at 333 Washington Street, Brookline, MA 02445.

4. Utilities

The Curator /Caretaker acknowledges that the Property is currently serviced by all necessary utilities, and the Town agrees that it shall not interfere with such utility service during the term of this Occupancy Agreement. The Curator/Caretaker covenants and agrees with the Town that, during the term of this Occupancy Agreement, the Curator/Caretaker will pay all charges for the use of water, heat (fuel and equipment

maintenance), sewer, gas, electricity, personal telephone and other utility services rendered to the Property.

5. Use and Occupancy of the Property

The Curator/Caretaker shall, as a requirement of his appointment, occupy and reside in the Property as resident curator/caretaker for the purpose of preserving it and its contents in accordance with the Brookline Historical Society's organizational purposes. The Curator/Caretaker acknowledges and agrees that as resident Caretaker he/she is required to live and reside in the Property and may allow not more than one (1) member of his/her immediate family to live in the Property, provided always, that any such rights may not be extended or transferred to any other person or persons.

If the Curator/Caretaker is going to be absent from the Property for more than seventy-two (72) hours, he/she will notify the Society's President in writing at least one week in advance. One extended absence of up to four weeks will be allowed in the year with required advance written notice and with adequate provisions that are acceptable to the Society for the care of the Property arranged in advance. In the event of an emergency requiring the absence of the Curator/Caretaker, the Town's Director of Public Buildings must be notified immediately. The Society's President will furnish the Caretaker with a list of the names, addresses, and telephone numbers of the officers of the Society.

The Curator/Caretaker will not conduct or consent to the conducting of any gainful occupation or other activity on the Property detrimental to its preservation or to its tax-exempt status.

The Curator/Caretaker agrees that his/her use and occupancy of the Property is subject to and will be in conformity with the "Basic Guidelines for the Curator/Caretaker of the Widow Harris House and Putterham School" found below (and which are incorporated herein), and to such additional reasonable rules, administrative policies, and procedures as the Society and/or the Selectmen may from time to time adopt concerning the preservation and administration of the Property, notice of which the Curator/Caretaker shall receive in writing as provided immediately hereafter. The Curator/Caretaker shall be given written notice within ten (10) business days by certified mail, return receipt requested, at 21 Newton Street, Brookline, Massachusetts 02445, of any such additional reasonable rules, administrative policies, and procedures adopted for the Curator/Caretaker position.

6. Quiet Enjoyment

The Town covenants and agrees that the Curator/Caretaker, upon performing and complying with the covenants, conditions, terms and agreements that are reflected in this Occupancy Agreement, shall and may peaceably hold and enjoy the Property during the term hereof without any interruption or disturbance from the Town or others claiming rights through the Town, subject, however, to the terms of this Occupancy Agreement.

This covenant shall be construed as running with the land to and against subsequent owners and successors in interest.

7. Suitability

Appointment of the Curator/Caretaker is subject to a determination that the Curator/Caretaker is a suitable person for the position based on the results of his/her criminal record background check. The Town may at its discretion terminate this Occupancy Agreement if it determines that the Curator/Caretaker is not a suitable person. The Curator/Caretaker agrees to authorize the Town to conduct a criminal record background check to determine whether he/she is a suitable person to serve as curator/caretaker.

8. No Employer-Employee/Landlord-Tenant Relationship

This Occupancy Agreement does not create a relationship of employer and employee or Landlord and Tenant.

9. Compliance with Law

The Curator/Caretaker warrants and agrees that it will conform with all federal, state and local laws, ordinances, rules and regulations in its maintenance, operation, use and occupancy of the Property and in performing caretaker services at the Property and curator services at the School.

10. Maintenance of the Property

The Curator/Caretaker agrees to maintain the Property in a good repair and in a proper, safe and attractive condition, including all approved improvements made for the Curator's/Caretaker's comfort and convenience, and in the same condition as it is found at the commencement of this Occupancy Agreement excepting reasonable wear and tear and damage by fire and other unavoidable casualty. The Curator/Caretaker shall not permit the Property to be overloaded, damaged, stripped or defaced, nor suffer any waste.

The Curator/Caretaker shall be responsible for grounds maintenance, the removal of ice and snow from walkways and steps around the Property, and the maintenance and upkeep of the Property in a safe and proper condition for use by the public.

The Caretaker will, on a regular basis, inspect all portions of the Property and promptly report to the Director of Public Buildings of the Town of Brookline observed needs for property repair, restoration or maintenance.

11. Indemnification and Liability

The Curator/Caretaker shall save the Town harmless from all loss and damage of

whatever kind or amount that may arise out of the use or occupancy of the Property by the Curator/Caretaker or his/her invitees or any other person using the Property during the term of this Occupancy Agreement, unless such loss is caused by the negligence of the Town or some other party for which the Curator/Caretaker is not responsible. This includes any loss or damage occasioned by the use or escape of water from the Property, by the bursting of pipes, by neglect in failing to remove snow and ice from the roof of the Property, and by any nuisance made or suffered on the Property.

12. Improvements, Repairs, Renovations and/or Alterations

The Curator/Caretaker shall not make any improvements, repairs, renovations or alterations to the Property other than ordinary maintenance except as provided by Section 13 below. The Caretaker will not make, or consent to the making of, any changes to any part of the Property or the School, to any woodwork, plaster, painted surfaces, or wall treatment, to the arrangement of furniture and furnishings in exhibition areas of the School, or to any features of the grounds, such as fences, trees, shrubbery, gardens, paths or roadways, without previous consultation with and specific written approval in each instance by both the Society and the Director of Public Buildings of the Town of Brookline.

The President of the Society and the Director of Public Buildings will retain or will be furnished with duplicates of all keys to the Property and any other security codes.

13. Mechanic's Liens

With respect to any work on the Property approved by the Director of Public Buildings, the Curator/Caretaker agrees that at least five (5) days before any construction work, labor or materials are done, used or expended by the Curator/Caretaker or by any person, firm, corporation or by any contractor, that Curator/Caretaker will post and record, or cause to be posted and recorded, as provided by law, a notice of non-responsibility on behalf of Town, giving notice that Town is not responsible for any work, labor or materials used or expended or to be used or expended on the Property. The Curator/Caretaker shall not permit any mechanics' liens, or similar liens, to remain upon the Property for labor and material furnished to the Curator/Caretaker or claimed to have been furnished to the Curator/Caretaker in connection with work of any character performed or claimed to have been performed at the direction of the Curator/Caretaker and shall cause any such lien to be released of record forthwith without cost to the Town. This requirement shall not apply to work performed by the Town on the Property.

14. Curator's/Caretaker's Right to Terminate Occupancy Agreement

The Curator/Caretaker may terminate this Occupancy Agreement at any time upon ninety (90) days advance written notice to the Director of Public Buildings if the Curator/Caretaker in good faith determines that the Property is no longer adequate to meet his/her objectives.

15. Town's Unilateral Right to Terminate Occupancy Agreement and Evict Curator/Caretaker and Others

Subject to other applicable provisions of this Occupancy Agreement, the Town shall have the unilateral right to terminate this Occupancy Agreement and evict the Curator/Caretaker and any of its invitees or persons claiming occupancy of the Property upon breach of the terms contained in this Occupancy Agreement and for other good cause, without prejudice to any remedy for arrears in the Curator's/Caretaker's Occupancy Payments. The Director of Public Buildings shall have the authority to issue all eviction notices and/or terminate this Occupancy Agreement. The Director of Public Buildings shall notify the Brookline Historical Society of any termination or eviction, but in no case shall the Society's signature or approval be required for such action.

16. Default/Breach and Bankruptcy by Curator/Caretaker

In the event that:

(a) The Curator/Caretaker shall default in the payment of any sum herein specified and such default shall continue for ten (10) days after written notice thereof; or

(b) The Curator/Caretaker defaults in the observance or performance of or otherwise breaches any other of the Curator/Caretaker's covenants, agreements or obligations hereunder and such default/breach is not corrected within thirty (30) after written notice thereof; or

(c) The Curator/Caretaker shall be declared bankrupt or insolvent according to law, or if any assignment shall be made of Curator/Caretaker's property for the benefit of creditors,

the Town, in its sole discretion, will be entitled to terminate this Agreement and to any applicable remedies that may include, but are not limited to, entry upon the Property and repossession of it, removal and disposal of all Personal Effects, and expelling and evicting the Curator/Caretaker and any of his/her invitees or persons claiming occupancy of the Property, without being guilty of any manner of trespass and without prejudice to any remedies that might be otherwise used for arrears of payments for use and occupancy of the Property or other default.

The Curator/Caretaker shall indemnify the Town against all loss of payments for use and occupancy of the Property and other loss which the Town may incur by reason of such termination during the residue of the term of this Occupancy Agreement, including reasonable attorneys' fees.

If the Curator/Caretaker shall default, after reasonable notice thereof, in the observance or performance of any conditions or covenants on the Curator/Caretaker's part to be observed or performed under or by virtue of any of its provisions in any article of this Occupancy Agreement, the Town, without being under any obligation to do so and

without thereby waiving such default, may remedy such default for the account and at the expense of the Curator/Caretaker.

If the Town makes any expenditures or incurs any obligations for the payment of money in connection therewith, including, but not limited to, reasonable attorneys' fees in instituting, prosecuting or defending any action or proceeding arising from the Curator/Caretaker's default in the observance or performance of any conditions or covenants on the Curator/Caretaker's part to be observed or performed under or by virtue of any of its provisions in any article of this Occupancy Agreement, such sums paid or obligations incurred, with interest at the rate of twelve (12%) per cent per annum, shall be paid to the Town by the Curator/Caretaker as additional rent.

17. Removal of Personal Effects

The Curator/Caretaker agrees that immediately at the conclusion of this Occupancy Agreement, he/she will remove from the Property all of his/her equipment, goods and effects and those of any of his/her invitees ("Personal Effects") and yield the Property to the Town (together with all locks and keys to the Property) free of all rubbish, and the like. In the event that the Curator/Caretaker fails to remove Personal Effects from the Property as required by this Section, the Town is authorized to remove and dispose of the Personal Effects in such manner as the Town may deem appropriate within its sole discretion, without incurring liability thereby. The Curator/Caretaker agrees to indemnify the Town for, and hold it harmless from, any costs the Town incurs in storing or otherwise disposing of Personal Effects that remain on the Property in violation of this Section.

18. Insurance Coverage

The Town shall maintain insurance for the Property at its discretion.

19. Fire, Casualty

The Curator/Caretaker will immediately notify the Town's Director of Public Buildings or, if not available, the staff of the Brookline Preservation Commission of any fire, casualty or damage affecting any of the property.

Should a substantial portion of the Property, or of the property of which it is a part, be substantially damaged by fire or other casualty, the Town may elect to terminate this Occupancy Agreement. When such fire or casualty renders the Property substantially unsuitable for its intended use, a just and proportionate abatement of the Occupancy Payments shall be made. The Curator/Caretaker may elect to terminate this Occupancy Agreement if:

(a) the Town fails to give written notice within thirty (30) days of its intention to restore the Property; or

(b) the Town fails to restore the Property to a condition substantially suitable for its intended use within ninety (90) days of said fire or casualty.

20. Town's Right of Access

The Town or its authorized agent shall have the right, at reasonable times, to enter the Property (i) to view the Property and determine whether the terms and conditions of this Occupancy Agreement are being observed by the Curator/Caretaker, (ii) to make any repairs or improvements authorized by this Occupancy Agreement, and (iii) during the last six months of the term of this Occupancy Agreement as it may be extended, to show the Property to prospective caretakers. The Curator/Caretaker will permit monthly inspections by Town officials of all parts of the Property at all reasonable times.

21. Notices

Any notice required or permitted hereunder shall be in writing and shall be hand-delivered, or sent by overnight commercial carrier, or sent by registered or certified mail postage prepaid, return receipt requested, addressed, if to the Town, to the "Director of Public Buildings, 333 Washington Street, Brookline, MA 02445," and if to the Curator/Caretaker, to "Patrick Farmer and Meredith Ruhl." Notice if mailed as aforesaid shall be deemed received two (2) days after the mailing date.

22. Entire Agreement

This Occupancy Agreement along with the "Basic Guidelines for the Curator/Caretaker of the Widow Harris House and Putterham School" and the Proposal both of which are attached hereto, contain the entire and exclusive agreement between the parties and supersede and terminate all prior or contemporaneous arrangements, understandings and agreements, whether oral or written. This Occupancy Agreement may not be amended or modified except by a writing executed by both the Town and the Curator/Caretaker.

The Town has made no representations or warranties other than those contained in this Occupancy Agreement.

23. Governing Law and Severability

This Occupancy Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. In the event any provision of this Occupancy Agreement shall be determined to be invalid or unenforceable under applicable law, such provision shall, insofar as possible, be construed or applied in such manner as will permit enforcement; otherwise this Occupancy Agreement shall be construed as if such provision had never been made part hereof.

24. Assents

No assent, express or implied, by one party to any breach of any covenant or condition herein contained on the part of the other shall be deemed to assent to any succeeding breach of the same, or to assent to any other covenant or condition. Nor shall any waiver, express or implied, or failure by one party to insist on the other's prompt performance or observance of any such covenant or condition be so deemed.

25. Binding Effect

This Occupancy Agreement shall be binding upon and inure to the benefit of all successors and assigns of the parties hereto.

26. Headings

The headings used are used only for convenience of reference and are not to be considered a part of the Occupancy Agreement or to be used in determining the intent of the parties hereto.

27. Assignment

This Occupancy Agreement is personal to and non-assignable by the Curator/Caretaker. The Curator/Caretaker shall not assign this Occupancy Agreement nor rent or sublet all or any part of the Property without the prior written consent of the Town's Director of Public Buildings.

IN WITNESS WHEREOF the undersigned executes this Occupancy Agreement in multiple counterparts, each of which shall be deemed to be an original, under seal, this 12th day of August, 2014.

CURATOR/CARETAKER:

TOWN OF BROOKLINE, BY ITS
SELECTMEN,

By: Meredith L. Ruhl
Robert Thomas

The Brookline Historical Society:

By: [Signature]

**BASIC GUIDELINES FOR THE CURATOR/CARETAKER OF THE
WIDOW HARRIS HOUSE AND THE PUTTERHAM SCHOOL**

**Attached to and Made Part of the Agreement for the Use and Occupancy
and Caretaker Services for the Widow Harris House and Curator Services for the
Putterham School ("Occupancy Agreement")**

A. Living Arrangements/Use:

1. Other than a cat belonging to the Curator/Caretaker, no animals or birds can be kept in or on the Widow Harris House, 21 Newton St., Brookline, Massachusetts (the "Property").
2. Installation of supplementary heating devices, cooling systems, household appliances or computer equipment must be approved in advance by the Building Commissioner and must comply with all applicable codes.
3. The President of the Brookline Historical Society ("Society") must approve all redecoration or other aesthetic changes in advance.
4. There will be no bright lights shining or noise coming from the Property that will disrupt the neighborhood.
5. No commercial or business signs shall be placed on the Property. The Curator/Caretaker shall obtain written consent of the Town before erecting any sign on the Property.
6. The Property shall be available for view at specified times to be determined by the Brookline Historical Society.
7. The Curator/Caretaker agrees that any use of the Property shall be compatible with the requirements and the rights of the Brookline Historical Society to house its artifacts and other valuable historic items at the Property.

B. Security/Safety:

1. The Property and the Putterham School ("School") should be kept locked when no one is present.
2. Locks shall not be changed, altered, added, or replaced by the Curator/Caretaker without the written permission of the Director of Public Buildings.
3. The Curator/Caretaker shall check all fire extinguishers on a monthly basis and see that they are recharged when necessary.

C. Services:

1. The Curator/Caretaker or a docent approved by the Society must accompany all visitors at all times while in the School.

2. The Curator/Caretaker shall assist in the conducting of the programs and activities of the Society at the School. A sheet summarizing such hours shall be submitted by the Curator/ Caretaker to the Society monthly on a form to be provided by the Society. These activities shall include: 1) Managing the activities at the Property including tours for public school groups and other members of the community, educational and public programs, security, property care (housekeeping and maintenance of house and grounds); 2) Planning and implementing educational and public programs with the guidance of the Society's Trustees; 3) Maintenance of the school's collection of furniture and artifacts; 4) Preparing reports concerning visitation, programs, collections, membership, gifts, accounting information, expenses, etc.; 5) Promoting the Property and its programs within the community; and 6) Showing the School at certain designated hours.

3. To the extent that the Curator/Caretaker conducts tours, gives talks, or otherwise participates in the activities or general programs of the Society in fulfillment of the requirements of the Society or otherwise, he/she shall provide the Society with copies of all speeches, monographs, notes, and other written or graphic materials prepared in connection therewith, and the Curator/Caretaker hereby grants the Society a royalty-free, perpetual, and unconditional license to make whatever use of any such materials the Society may wish to make in connection with carrying out its organizational purposes.

4. During the term of the parties' Occupancy Agreement, the Curator/Caretaker agrees that he/she will not conduct any public activities relating to the history of the Town of Brookline except as part of his/her services as Curator/Caretaker, except for services provided for the Larz Anderson Auto Museum, and as may be specifically agreed to in writing in advance by the Society's President.